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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/763,252  | 01/26/2004  | Paul Price           | 0942.4120006/RWE/FRC | 8017             |
| 26111   | 7590        | 01/12/2006           | EXAMINER             |                  |
| STERNE, KESSLER, GOLDSTEIN & FOX PLLC<br>1100 NEW YORK AVENUE, N.W.<br>WASHINGTON, DC 20005 |             |                      | COE, SUSAN D         |                  |
|   |             |                      | ART UNIT             | PAPER NUMBER     |
|   |             |                      | 1655                 |                  |

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/763,252 | <b>Applicant(s)</b><br>PRICE ET AL. |  |
|                              | <b>Examiner</b><br>Susan D. Coe      | <b>Art Unit</b><br>1655             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 18-21 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18-21 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/05</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The amendment filed October 12, 2005, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 14-17 and 22-27 have been cancelled.
3. Claims 1-13, 18-21 and 28 are pending.
4. In the reply filed on January 26, 2005, applicant elected without traverse phosphoethanolamine for species A, linolenate for species B, stigmasterol for species C, mammalian cell for species D and rice for species E. Due to applicant's amendment, the species of rice in claim 1 and its dependents are considered free of the art because this is the same species that was allowed in US Pat. No. 6,103,529. This species is still rejected under double patenting as set forth below in paragraph 9. MPEP section 803.02 states:

Should applicant, in response to this rejection of the Markush-type claim, overcome the rejection... the amended Markush-type claim will be reexamined. The prior art search will be extended to the extent necessary to determine patentability of the Markush-type claim. In the event prior art is found during the reexamination that anticipates or renders obvious the amended Markush-type claim, the claim will be rejected and the action can be made final...

The search of claims 1 and its dependents has been extended to cover "yeast" as the source of the peptides. For claim 2 and its dependents, the search has still been limited to "rice" as the source of the plant derived lipid or fatty acid. In addition, the species of stigmasterol has been found to be free of the art. The search of the Markush group of claim 11 has been extended to cover sitosterol.

5. Claims 1-13, 18-21, and 28 are examined on the merits.

***Priority***

Applicant's claim to priority based on US Provisional Application Number 60/183,031 is acknowledged.

***Claim Rejections - 35 USC § 102***

6. Claims 1-9, 12, 13, 18-21 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat. No. 5,633,162 in light of English abstract of CN 136507 as providing evidence of inherency in regards to lineoleate.

US '162 teaches a culture medium for mammalian cells that is devoid of any proteins obtained from an animal source. The ingredients in the medium can be inorganic, synthetic, recombinant, or isolated from a plant or a bacteria (see column 3, first full paragraph). The culture medium can contain a lipid factor such as lineoleate (see column 52-54). The medium can also contain yeast extract which contains peptides (see column 6, lines 33-38).

Please note that linolenate is a fatty acid that is found in rice (see English abstract of CN 1362507). Thus, even if the reference does not specifically teach this, linolenate is a rice fatty acid.

***Claim Rejections - 35 USC § 103***

7. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,633,162 in view of US Pat. No. 5,266,479.

The teachings of US '162 are discussed above. However, US '162 does not teach adding phosphoethanolamine to the medium. US '479 teaches that phosphoethanolamine is a growth supplement that can be added to animal cell culture media. Based on this teaching, a person of

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ordinary skill in the art would reasonably expect that this ingredient could beneficially be added to the culture medium taught by US '162. Therefore, an artisan of ordinary skill would have been motivated to add phosphoethanolamine to the culture medium of US '162.

8. Claims 1-13, 18-21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,633,162 in view of US Pat. No. 6,733,746.

The teachings of US '162 are discussed above. However, US '162 does not teach adding sitosterol to the medium. US '746 teaches adding sitosterol to a culture medium for animal cells. The reference also teaches adding rice derived lipids and linolenic acid (see column 12, first full paragraph). Based on this teaching, a person of ordinary skill in the art would reasonably expect that these ingredient could beneficially be added to the culture medium taught by US '162. Therefore, an artisan of ordinary skill would have been motivated to add phosphoethanolamine to the culture medium of US '162.

### ***Double Patenting***

9. Claims 1-9, 12, 13, 18-21, and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,103,529 for the reasons set forth in the previous Office action.

Applicant has requested that this rejection be held in abeyance until allowable subject matter is indicated. Thus, the rejection is still considered valid at this time for the reasons of record.

10. No claims are allowed.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

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Susan D. Coe  
Primary Examiner  
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